

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1045 / 09-0318

Filed July 14, 2010

**LOCAL 447 OF THE INTERNATIONAL  
UNION OF PAINTERS AND ALLIED TRADES,**  
Plaintiff-Appellee,

**vs.**

**FEAKER PAINTING, INC.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Linn County, Patrick R. Grady,  
Judge.

Feaker Painting, Inc. appeals from a district court decision enforcing a  
subpoena duces tecum issued by an arbitrator in a collective bargaining dispute.

**AFFIRMED.**

Brian L. Gruhn of Gruhn Law Firm, Cedar Rapids, for appellant.

Mark T. Hedberg and Benjamin G. Humphrey of Hedberg & Boulton, P.C.,  
Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

**VAITHESWARAN, J.**

The primary issue we must decide is whether an arbitrator in a collective bargaining dispute has authority to order a nonparty to produce documents.

***I. Background Facts and Proceedings***

Local 447 of the International Union of Painters and Allied Trades (Union) and Five Seasons Paint & Drywall, Inc. (Five Seasons) had a collective bargaining agreement. Randy Feaker owned Five Seasons. He also owned a majority share in Feaker Painting, Inc., a nonunionized entity.

The Union filed a grievance against Five Seasons, alleging the company violated the collective bargaining agreement by performing work through Feaker Painting without providing the wages and benefits required by the agreement. The Union notified Five Seasons of its intent to compel arbitration of the grievance. After several months, Five Seasons urged that intervening events prevented the Union from proceeding with arbitration. At this juncture, the Union filed an action in federal court, seeking to compel arbitration of the grievance. The federal district court ordered arbitration.

The arbitrator concluded that Five Seasons violated the collective bargaining agreement. The arbitrator retained jurisdiction of the dispute in the event the parties could not reach an agreement on a remedy.

The Union subsequently asked the arbitrator to direct a subpoena duces tecum to Feaker Painting for the production of certain documents. The subpoena was issued, but Feaker Painting did not produce the requested documents.

The Union filed a state court application to enforce the arbitrator's subpoena. Feaker Painting moved to dismiss the action based on a lack of

subject matter jurisdiction and failure to state a claim. The district court denied the motion to dismiss<sup>1</sup> and, following a hearing, entered an order requiring Feaker Painting to comply with the subpoena. As part of the order, the court prohibited the Union “and its agents . . . from disclosing the items outside of consultation and preparation with their attorney for presentation in arbitration or in further court proceedings.”

On appeal, Feaker Painting asserts that (A) the district court lacked subject matter jurisdiction to enforce the subpoena against a nonparty; (B) the Union failed to state a claim against Feaker Painting because section 679A.7 of the Iowa Arbitration Act (2007) only applies to parties; and (C) the subpoenaed records should be considered protected trade secrets.

## ***II. Analysis***

### ***A. Subject Matter Jurisdiction***

Feaker Painting contends the issue of whether the arbitrator could enforce the subpoena is governed by federal law, specifically the Labor Management Relations Act (LMRA) and the Federal Arbitration Act (FAA). See 29 U.S.C. § 185; 9 U.S.C. §§ 1–307. In Feaker Painting’s view, “[w]hen a defendant is not a party to an arbitration agreement there is no jurisdiction under the Federal Arbitration Act.” The absence of federal jurisdiction, the argument goes, deprived the state court of subject matter jurisdiction.

We believe Feaker Painting is raising a preemption argument. “Preemption is a jurisdictional issue concerning the power of the state court to

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<sup>1</sup> Feaker Painting filed a request for interlocutory appeal from that ruling, which was denied by our supreme court.

decide certain issues.” *Brown v. Garman*, 364 N.W.2d 566, 568 (Iowa 1985). The doctrine may or may not implicate the subject matter jurisdiction of the state court. See *Wright v. Am. Cyanamid Co.*, 599 N.W.2d 668, 671 (Iowa 1999) (“The preemption doctrine does not deprive state courts of subject matter jurisdiction over claims involving federal preemption unless Congress has given exclusive jurisdiction to a federal forum.”). In this case, subject matter jurisdiction is not implicated, as the LMRA grants state courts concurrent jurisdiction over the claims governed by that act, as does the FAA. See *Brown*, 364 N.W.2d at 573 (“[S]tate and federal courts have concurrent jurisdiction in fashioning the substantive federal law governing enforcement of collective bargaining agreements.”); see also *Weldon v. Asset Acceptance, LLC*, 896 N.E.2d 1181, 1184 n.2 (Ind. Ct. App. 2008) (“[I]t is well established that state courts have concurrent jurisdiction with federal courts to enforce the FAA.”).

While the state court’s subject matter jurisdiction is not implicated by the preemption doctrine, dismissal under the preemption doctrine may nevertheless be warranted. See *Ackerman v. Am. Cyanamid Co.*, 586 N.W.2d 208, 214 n.3 (Iowa 1998). We accordingly turn to the question of whether preemption is appropriate under either the LMRA or the FAA.

**1. LMRA.** Preemption under the LMRA will arise “when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between parties in a labor contract.” *Barske v. Rockwell Int’l Corp.*, 514 N.W.2d 917, 921 (Iowa 1994) (quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220, 105 S. Ct. 1904, 1916, 85 L. Ed. 2d 206, 221 (1985)). Conversely, a claim is independent of a collective bargaining agreement when its

resolution “does not require construing the collective-bargaining agreement.” *Lingle v. Norge Div. of Magic Chef*, 486 U.S. 399, 407, 108 S. Ct. 1877, 1882, 100 L. Ed. 2d 410, 419–20 (1988).

The Union’s action is styled as an “Application to Enforce an Arbitrator’s Subpoena” and seeks relief under the authority of Iowa Code section 679A.7(1), which, in part, authorizes arbitrators to issue subpoenas for the production of books. The action does not require interpretation of the collective bargaining agreement. See, e.g., *Grimm v. US West Commc’ns, Inc.*, 644 N.W.2d 8, 14 (Iowa 2002) (declining to dismiss claim based on preemption where it was unclear from pleadings whether examination of collective bargaining agreement was required); *Barske*, 514 N.W.2d at 924 (determining tort of negligent misrepresentation did not require interpretation of collective bargaining agreement and was not preempted); *Conaway v. Webster City Prods. Co.*, 431 N.W.2d 795, 799 (Iowa 1988) (concluding retaliatory tort actions were independent of the collective bargaining agreement and not preempted). Accordingly, we conclude the Union’s claim is not preempted by the LMRA.

**2. FAA.** The FAA “contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration.” *Volt Info. Sci., Inc. v. Bd. of Trustees of Leland Stanford*, 489 U.S. 468, 477, 109 S. Ct. 1248, 1255, 103 L. Ed. 2d 488, 499 (1989).

But even when Congress has not completely displaced state regulation in an area, state law may nonetheless be pre-empted to the extent that it actually conflicts with federal law—that is, to the extent that it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”

*Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S. Ct. 399, 404, 85 L. Ed. 2d 581 (1941)).

Section 679A.7 does not conflict with the FAA, which contains a similar, though not identical, subpoena provision. See 9 U.S.C. § 7. Nor does it conflict with the purpose of the FAA, which is “to overrule the judiciary’s long-standing refusal to enforce agreements to arbitrate.” *Volt Info. Sci.*, 489 U.S. at 478, 109 S. Ct. at 1255, 103 L. Ed. 2d at 499 (citation omitted). For these reasons, section 679A.7 is not preempted by the FAA. We turn to the next question, whether section 679A.7 applies to non-parties.

**B. Section 679A.7**

Section 679A.7(1) states:

The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and may administer oaths. Subpoenas shall be served, and upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

By its terms, this provision is not limited to parties. Therefore, based on a plain reading of the statute, we are convinced the arbitrator had the authority to issue a subpoena to Feaker Painting. See *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 407 n.1 (3rd Cir. 2004) (noting pertinent FAA provision is limited to parties and listing state statutes that “explicitly grant arbitrators the power to issue pre-hearing document production subpoenas on third parties”); *compare* Iowa Code § 679A.7 (“The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and may administer oaths.”) *with* 10 Del. Code § 5708(a) (“The

arbitrators may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence, and shall have the power to administer oaths.”); 42 Pa. C.S.A. § 7309 (“The arbitrators may issue subpoenas in the form prescribed by general rules for the attendance of witnesses and for the production of books, records, documents and other evidence.”).<sup>2</sup>

Our conclusion is bolstered by the Iowa Supreme Court’s opinion in *UE Local 893/Iowa United Prof’ls v. Schmitz*, 576 N.W.2d 357 (Iowa 1998). There, the court was asked to decide whether a union could enforce an arbitrator’s subpoena issued to a supervisory employee of a state agency. *Id.* at 358. The court did not expressly decide whether an arbitrator’s subpoena power under section 679A.7(1) extends to entities that are not parties to the arbitration proceeding. However, the court used language strongly suggesting it does. Specifically, the court stated,

Without a statute granting arbitrators subpoena powers, parties to collective bargaining agreements have no way to enforce obedience to any subpoena that arbitrators may issue to witnesses *other than the parties*, or persons in privity with the parties. As to such *nonparty* and nonprivity witnesses, any agreement authorizing arbitrators to issue subpoenas is an exercise in futility.

*Id.* at 361 (emphasis added).

Based on the language of section 679A.7(1) and *Schmitz*, we conclude the arbitrator had authority to compel a nonparty to the arbitration proceeding, in this case Feaker Painting, to produce documents for use in the arbitration

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<sup>2</sup> The Third Circuit did not list Iowa, but a comparison of section 679A.7(1) with the language of the state statutes cited by that court reveals that Iowa’s language is virtually identical.

proceedings. Accordingly, we affirm the district court's decision enforcing the arbitrator's subpoena duces tecum.

**C. Trade Secrets**

The Union requested the following documents from Feaker Painting for a specified time period: (1) all job lists and/or a job list of all jobs performed with any coding; (2) all payroll records; (3) all billing invoices to customers for work performed and work orders; (4) all bid awards; (5) all time cards from employees indicating work performed including job codes; (6) any and all records utilized for purposes of paying employees and billing customers; (7) employee individual earning records detailing hours paid; (8) quarterly payroll tax returns (federal form 941) and state employment returns and annual W2s; (9) all cash disbursements, journals, and/or checkbooks; (10) general ledger; (11) federal forms 1096 and 1099; (12) invoices and benefit contributions on any of Feaker Painting's employees; and (13) pertinent personnel file information. Feaker Painting argued production of these documents "may compromise trade secrets." The district court noted this objection, but determined Feaker Painting "raised no principled objections to producing many of the items" and "[a]ny claim of undue burden is not supported in the record." The court ordered the production of most of the documents with the caveat that the Union "and its agents are prohibited from disclosing the items outside of consultation and preparation with their attorney for presentation in arbitration or in further court proceedings." Feaker Painting now reiterates that the subpoenaed documents were protected trade secrets.

Iowa Rule of Civil Procedure 1.504(1)(a)(7) authorizes the protection of trade secrets, which are defined as “information used in one’s business, and which gives the person an opportunity to obtain an advantage over competitors who do not know or use it.” *State ex rel. Miller v. Nat’l Dietary Research, Inc.*, 454 N.W.2d 820, 824 (Iowa 1990); see also Iowa Code § 550.2(4) (defining trade secrets). To obtain a protective order, there must be “‘a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.’” *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384, 389 (Iowa 1983) (quoting 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2035, at 265 (1970)).

Feaker Painting did not make this showing. Part-owner Tim Feaker testified on this issue but failed to explain the extent to which the information was known in the business, the measures he took to protect the information, the value of the information, the amount of effort or money he expended in developing the information, or the ease with which the information could be duplicated or acquired. See *Nat’l Dietary Research*, 454 N.W.2d at 824 (identifying factors to be considered in determining whether information is a trade secret or confidential information). He simply cited the potential adverse economic effect of disseminating client lists and bid information, noting that he did not want other contractors “knowing what I do or who I have working or anything.” While we do not doubt that the concern he raised was real, the district court adequately addressed it by limiting disclosure of the documents to the Union’s attorneys in the underlying litigation.

We conclude the district court did not abuse its discretion in declining to characterize the materials as trade secrets. See *Farnum*, 339 N.W.2d at 389 (“The trial court has wide discretion in its rulings on discovery issues and will be reversed only when an abuse of discretion is found.”).

We affirm the district court’s enforcement of the arbitrator’s subpoena.

**AFFIRMED.**